

1 HONORABLE RICHARD A. JONES  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 DAVID R. GELINAS, *et al.*,

11 Plaintiffs,

12 v.

13 BANK OF AMERICA, N.A., *et al.*,

14 Defendants.

15 Case No. 16-1355-RAJ

16 ORDER

17 **I. INTRODUCTION**

18 This matter comes before the Court on Plaintiffs' Motion to Set Aside or Vacate  
19 (Dkt. # 19) this Court's Order granting Defendants' Motion to Dismiss (Dkt. # 18). For  
20 the reasons that follow, the Court **DENIES** the Motion.

21 **II. BACKGROUND**

22 On October 12, 2016, Defendants, Bank of America, N.A., HSBC Bank, USA,  
23 National Association, and Mortgage Electronic Registration Systems, Inc. (collectively,  
24 "Defendants"), moved to dismiss a complaint filed by Plaintiffs David R. Gelinas and  
25 Karen M. Gelinas (collectively, "Plaintiffs"). Dkt. # 10. On March 28, 2017, the Court  
26 granted Defendants' motion and gave Plaintiffs leave to amend their complaint.  
27 Dkt. #18. Plaintiffs did not file an amended complaint, but instead filed a motion to set  
28 aside or vacate the order granting Defendants' motion. Dkt. #19. Plaintiffs, *pro se*  
litigants, do not specify what authority under which they bring their motion.

1 Accordingly, the Court will consider Plaintiffs' Motion under Federal Rules of Civil  
2 Procedure 59(e) and 60(b) and Local Rule 7(h).

3 **III. LEGAL STANDARD**

4 Motions for reconsideration are disfavored under the Local Rules for the Western  
5 District of Washington. *See* LCR 7(h)(1). Thus, "in the absence of a showing of  
6 manifest error in the prior ruling or a showing of new facts or legal authority which could  
7 not have been brought to [the Court's] attention earlier with reasonable diligence," such  
8 motions will ordinarily be denied. *Id.* Motions for reconsideration must be filed within  
9 fourteen (14) days of the order on which the motion is based. LCR 7(h)(2).

10 While a previous order can be reconsidered and amended under Rule 59(e), the  
11 rule offers an "extraordinary remedy" to be used sparingly. A motion to reconsider  
12 "should not be granted, absent highly unusual circumstances, unless the district court is  
13 presented with newly discovered evidence, committed clear error, or if there is an  
14 intervening change in the controlling law." *Carroll v. Nakatani*, 342 F.3d 934, 945  
15 (9th Cir. 2003)(quoting *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890  
16 (9th Cir. 2000); Fed. R. Civ. P. 59. Rule 60(b) allows a party to seek relief from an order  
17 under a "limited set of circumstances, including fraud, mistake, and newly discovered  
18 evidence." *Harvest v. Castro*, 531 F.3d 737, 744 (9th Cir. 2008); Fed. R. Civ. P. 60(b).

19 **IV. DISCUSSION**

20 As a preliminary matter, as a motion brought under Local Rule 7, Plaintiffs'  
21 Motion is untimely. The Order granting Defendants' motion to dismiss was issued on  
22 March 28, 2017. Plaintiffs' Motion was filed on April 25, 2017. Plaintiffs' Motion was  
23 not filed within the fourteen (14) days required by Local Rule 7(h)(2). Under Rule 59, a  
24 motion to alter a judgment must be filed no later than 28 days after the entry of judgment.  
25 Fed. R. Civ. P. 59. Under Rule 60, a motion for relief from judgment must be filed  
26 within a "reasonable time" or if brought under circumstances of alleged mistake, newly  
27 discovered evidence, or fraud, no more than one year after the entry of the order.

1 Fed. R. Civ. P. 60(c). As Plaintiffs' Motion is timely under Rules 59 and 60, and  
2 Plaintiffs do not indicate what legal authority they bring their Motion under, their  
3 arguments will be still be considered here.

4 Plaintiffs argue that the Court's Order should be vacated because Defendants'  
5 Motion to Dismiss was untimely and because Defendants failed to file a corporate  
6 disclosure statement in compliance with Local Rule 7.1. LCR 7.1. Plaintiffs bring these  
7 arguments for the first time in this Motion. A Rule 59(e) motion may not be used to raise  
8 arguments or present evidence for the first time when they could reasonably have been  
9 raised earlier in litigation. *Carroll*, 342 F.3d at 945 (9th Cir. 2003). Plaintiffs could have  
10 raised these issues at any time prior to the Court's Order and failed to do so. Further,  
11 Plaintiffs make no argument that there is an error in the prior ruling, newly discovered  
12 facts or evidence, or a change in controlling law, such that reconsideration of the Order is  
13 warranted. Neither do Plaintiffs claim that these procedural issues present any of the  
14 grounds for relief available to them under Rule 60. Other than to note that these issues  
15 constitute technical deficiencies, Plaintiffs make no argument that the alleged  
16 untimeliness of the Motion to Dismiss and the absence of the corporate disclosure  
17 statement prejudiced them in any way. As Plaintiffs' provide no basis for reconsideration  
18 under Rule 59, Rule 60, or Local Rule 7, their Motion must be **DENIED**.

## 19 V. CONCLUSION

20 For the reasons stated above, the Court **DENIES** Plaintiffs' Motion to Set Aside or  
21 Vacate. Dkt. #19.

22 DATED this 6th day of September, 2017.

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26 The Honorable Richard A. Jones  
27 United States District Judge  
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